



03-10-04

Express Mail No. EV335859685US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Michael L. Boyer II;  
David C. Paul  
Thomas B. Higgins; and  
Christopher M. Angelucci

Confirmation No.: Not Yet Assigned

Serial No.: Not Yet Assigned 10/730011 Art Unit: Not Yet Assigned

Filed: December 9, 2003 Examiner: Not Yet Assigned

For: SKELETAL RECONSTRUCTION  
CAGES Attorney Docket No.: 008932-0874-999

INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

RECEIVED  
APR - 1 2004  
OIPE/JCWS

In accordance with the duty of disclosure provisions of 37 C.F.R. §1.56, there is hereby provided certain information which the Examiner may consider material to the examination of the subject U.S. patent application. It is requested that the Examiner make this information of record if it is deemed material to the examination of the application.

1. Enclosures accompanying this Information Disclosure Statement are:

1a. ☒ A list of all patents, publications, applications, or other information submitted for consideration by the office.

1b. A legible copy of:

☒ Each U.S. patent application publication and U.S. and foreign patent; (in conformity with the revised IDS procedures for applications filed after July 1, 2003, only copies of the foreign references are enclosed herein)

☒ Each publication or that portion which caused it to be listed on the PTO-1449;

☐ For each cited pending U.S. application, the application specification including the claims, and any drawing of the application, or portion of the application which caused it to be listed on the PTO-1449 including any claims directed to that portion;

☒ all other information or portion which caused it to be listed on the PTO-1449.

1c. ☐ An English language copy of search report(s) from a counterpart foreign application or PCT International Search Report.

1d. ☒ Explanations of relevancy (ATTACHMENT 1(d), hereto) or English language abstracts of the non-English language publications.

2. ☒ This Information Disclosure Statement is filed under 37 C.F.R. §1.97(b):

☒ Within three months of the filing date of a national application other than a

continued prosecution application under §1.53(d);

- ☐ Within three months of the date of entry of the national stage as set forth in §1.491 in an international application;
- ☒ Before the mailing of the first Office action on the merits;
- ☐ Before the mailing of a first Office action after the filing of a request for continued examination under §1.114.

3. ☐ This Information Disclosure Statement is filed under 37 C.F.R. §1.97(c) after the period specified in 37 C.F.R. §1.97(b), but before the mailing date of any of a final action under 37 C.F.R. §1.113, a notice of allowance under 37 C.F.R. §1.311 or an action that otherwise closes prosecution in the application.

*(Check either Item 3a or 3b)*

- 3a. ☐ The Certification Statement in Item 5 below is applicable. Accordingly, no fee is required.
- 3b. ☐ The \$180.00 fee set forth in 37 C.F.R. §1.17(p) in accordance with 37 C.F.R. §1.97(c) is:
- ☐ enclosed
  - ☐ to be charged to Jones Day Deposit Account No. 503013.

*(Item 3b to be checked if any reference known for more than 3 months)*

4. ☐ This Information Disclosure Statement is filed under 37 C.F.R. §1.97(d) after the period specified in 37 C.F.R. §1.97(c), but on or before the date of payment of the issue fee.

The Certification Statement in Item 5 below is applicable.

The \$180.00 fee set forth in 37 C.F.R. §1.17(p) is:

- ☐ enclosed.
- ☐ to be charged to Jones Day Deposit Account No. 503013.

5. ☐ Certification Statement (applicable if Item 3a or Item 4 is checked)

*(Check either Item 5a or 5b)*

- 5a. ☐ In accordance with 37 C.F.R. §1.97(e)(1), it is certified that each item of information contained in this Information Disclosure Statement was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement.
- 5b. ☐ Each item of information contained in this information disclosure statement was cited in a communication from a foreign patent office in a counterpart application, and the communication was not **received** by any individual designated in 37 C.F.R. §1.56(c) more than thirty days prior to the filing of this information disclosure statement.
- 5c. ☐ Pursuant to 37 C.F.R. §1.704(d), each item of information contained in this information disclosure statement was cited in a communication from a foreign patent office in a counterpart application, and the communication was not **received** by any individual designated in 37 C.F.R. §1.56(c) more than thirty

days prior to the filing of this information disclosure statement.

6. ☒ This application is a continuation application under 37 C.F.R. §1.60 or §1.53(b) or (d).

*(Check appropriate Items 6a, 6b and/or 6c)*

- 6a. ☐ A Petition to Withdraw from issue under 37 C.F.R. §1.313(b)(5) is concurrently filed herewith.
- 6b. ☒ Copies of publications listed on Form PTO-1449 from prior application Serial No. 09/814,215, filed on March 22, 2001, of which this application claims priority under 35 U.S.C. §120, are not being submitted pursuant to 37 C.F.R. §1.98(d). (Previously cited foreign references are being resubmitted for your benefit).
- 6c. ☐ Copies of the publications listed on Form PTO-1449 were not previously cited in prior application Serial No. , filed on , and are provided herewith.
7. ☐ This is a Supplemental Information Disclosure Statement. (Check Item 7a)
- 7a. ☐ This Supplemental Information Disclosure Statement under 37 C.F.R. §1.97(f) supplements the Information Disclosure Statement filed on . A bona fide attempt was made to comply with 37 C.F.R. §1.98, but inadvertent omissions were made. These omissions have been corrected herein. Accordingly, additional time is requested so that this Supplemental Information Disclosure Statement can be considered as if properly filed on .
8. ☒ In accordance with 37 C.F.R. §1.98, a concise explanation of what is presently understood to be the relevance of each non-English language publication is:

*( Check Item 8a, 8b, or 8c)*

- 8a. ☐ satisfied because all non-English language publications were cited on the enclosed English language copy of the PCT International Search Report or the search report from a counterpart foreign application indicating the degree of relevance found by the foreign office.
- 8b. ☐ set forth in the application.
- 8c. ☒ enclosed as an attachment hereto.
9. ☒ The Commissioner is authorized to charge any additional fee required or credit any overpayment for this Information Disclosure Statement and/or Petition to Jones Day Deposit Account No. 503013.

10. ☒ No admission is made that the information cited in this Statement is, or is considered to be, material to patentability nor a representation that a search has been made (other than a search report of a foreign counterpart application or PCT International Search Report if submitted herewith). 37 C.F.R. §§1.97(g) and (h).

Respectfully submitted,

Date: March 9, 2004

Respectfully submitted,

*Giuseppe Molaro* 52,039  
By: Giuseppe Molaro (Reg. No.)

35,340  
For: Brian M. Rothery (Reg. No.) ✓  
**JONES DAY**  
222 East 41st Street  
New York, New York 10017  
(212) 326-3939



**LIST OF REFERENCES CITED BY APPLICANT**  
(Use several sheets if necessary)

ATTY DOCKET NO.

8932-874-999

APPLICATION NO

Not Yet Assigned

APPLICANT

M. BOYER II *et al.*

FILING DATE

December 09, 2003

GROUP

623

**U.S. PATENT DOCUMENTS**

*EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
	A01	2002/0106393 A1	8/2002	Bianchi et al.	424	423	
	A02	US 2001/0016777 A1	08/2001	Biscup	623	17.16	
	A03	US2001/0010021 A1	07/2001	Boyd et al.	623	17.13	
	A04	US2001/0001129 A1	05/2001	McKay et al.	623	17.16	
	A05	6,458,158 B1	10/2002	Anderson et al.	623	16.11	
	A06	6,258,125 B1	07/2001	Paul et al.	623	17.11	
	A07	6,245,108 B1	06/2001	Biscup	623	17.11	
	A08	6,241,769 B1	06/2001	Nicholson et al.	623	17.11	
	A09	6,200,347 B1	03/2001	Anderson et al.	623	16.11	
	A10	6,193,756 B1	02/2001	Studer et al.	623	17.15	
	A11	6,176,882	01/2001	Bierdermann et al.	623	17.15	
	A12	6,149,686	11/2000	Kuslich et al.	623	17.11	
	A13	6,143,033	11/2000	Paul et al.	623	17.11	
	A14	6,136,031	10/2000	Middleton	623	17	
	A15	6,129,763	10/2000	Chauvin et al. (see CP)	623	17	
	A16	6,126,689	10/2000	Brett	623	17.16	
	A17	6,086,613	07/2000	Camino et al.	623	17	
	A18	6,080,193	06/2000	Hochshuler et al.	623	17	
	A19	6,080,158	06/2000	Lin	606	61	
	A20	6,063,121	05/2000	Xavier et al.	623	17	
	A21	6,045,580	04/2000	Scarborough et al.	623	17	
	A22	6,045,579	04/2000	Hochshuler et al.	623	17	
	A23	6,033,405	03/2000	Winslow et al.	606	61	
	A24	6,025,538	02/2000	Yaccarino, III	623	16	
	A25	6,015,436	1/2000	Schönhöffer	623	17	
	A26	5,989,289	11/1999	Coates et al.	623	17	
	A27	5,989,290	11/1999	Bidermann et al.	623	17	
	A28	5,984,967	11/1999	Zdeblick et al.	623	17	
	A29	5,980,522	11/1999	Koros et al.	606	61	
	A30	5,976,187	11/1999	Richelsoph	623	17	
	A31	5,972,368	10/1999	McKay	424	423	
	A32	5,972,031	10/1999	Bidermann et al.	623	17	
	A33	5,968,098	10/1999	Winslow	623	17	
	A34	5,910,315	06/1999	Stevenson et al.	424	422	
	A35	5,904,719	05/1999	Errico et al.	623	17	
	A36	5,899,939	05/1999	Boyce et al.	623	16	

	A37	5,895,426	04/1999	Scarborough et al.	623	17	
	A38	5,888,227	03/1999	Cottle	623	17	
	A39	5,888,224	03/1999	Beckers et al.	623	17	
	A40	5,888,222	03/1999	Coates et al.	623	17	
	A41	5,885,299	03/1999	Winslow et al.	606	99	
	A42	5,865,848	2/1999	Baker	623	17	
	A43	5,865,845	2/1999	Thalgott	623	17	
	A44	5,861,041	1/1999	Tienboon	623	17	
	A45	5,860,973	1/1999	Michelson	606	61	
	A46	5,827,328	10/1998	Buttermann	623	17	
	A47	5,800,547	9/1998	Schäfer et al.	623	17	
	A48	5,785,710	07/1998	Michelson	606	61	
	A49	5,776,197	7/1998	Rabbe et al.	623	17	
	A50	5,776,198	7/1998	Rabbe et al.	623	17	
	A51	5,776,199	07/1998	Michelson	623	17	
	A52	5,766,253	06/1998	Brosnahan, III	623	17	
	A53	5,755,798	5/1998	Papavero et al.	623	17	
	A54	5,702,455	12/1997	Saggar	623	17	
	A55	5,702,453	12/1997	Rabbe et al.	623	17	
	A56	5,702,451	12/1997	Biedermann et al.	623	17	
	A57	5,702,449	12/1997	McKay	623	17	
	A58	5,700,291	12/1997	Kuslich et al.	623	17	
	A59	5,683,463	11/1997	Godefroy et al.	623	17	
	A60	5,683,464	11/1997	Wagner et al.	623	17	
	A61	5,683,394	11/1997	Rinner	606	86	
	A62	5,674,295	10/1997	Ray et al.	623	17	
	A63	5,609,637	03/1997	Biedermann et al.	623	17	
	A64	5,609,636	03/1997	Kohrs et al.	623	17	
	A65	5,609,635	03/1997	Michelson	623	17	
	A66	5,571,192	11/1996	Schönhöffer (see CS)	623	17	
	A67	5,571,190	11/1996	Ulrich et al. (see CX)	623	17	
	A68	5,554,191	09/1996	Lahille et al.	623	17	
	A69	5,549,679	08/1996	Kuslich	623	17	
	A70	5,534,030	07/1996	Navarro et al.	623	17	
	A71	5,534,029	07/1996	Shima	623	17	
	A72	5,522,899	06/1996	Michelson	623	17	
	A73	5,514,180	05/1996	Heggeness et al.	623	17	
	A74	5,507,818	04/1996	McLaughlin	623	18	
	A75	5,489,308	02/1996	Kuslich et al.	623	17	
	A76	5,458,638	10/1995	Kuslich et al.	623	17	
	A77	5,439,684	08/1995	Prewett et al.	424	422	
	A78	5,423,817	06/1995	Lin	606	61	

	A79	5,405,391	04/1995	Hednerson et al.	623	17	
	A80	5,314,476	05/1994	Prewett et al.	623	16	
	A81	5,284,655	02/1994	Bogdansky et al.	424	422	
	A82	5,281,226	01/1994	Davydov et al.	606	62	
	A83	5,211,664	05/1993	Tepic et al.	623	16	
	A84	5,192,327	03/1993	Brantigan	623	17	
	A85	5,147,404	09/1992	Downey	623	17	
	A86	5,062,850	11/1991	MacMillan et al.	623	17	
	A87	5,055,104	10/1991	Ray	606	61	
	A88	5,026,373	06/1991	Ray et al.	606	61	
	A89	5,015,247	5/1991	Michelson	606	61	
	A90	4,961,740	10/1990	Ray et al.	606	61	
	A91	4,950,296	08/1990	McIntyre	623	16	
	A92	4,834,757	5/1989	Brantigan	623	17	
	A93	4,820,305	4/1989	Harms et al.	623	16	
	A94	4,501,269	02/1985	Bagby	128	92 G	
	A95	D403,069	12/1998	Drewry et al.	D24	155	
	A96	D397,439	8/1998	Koros et al.	D24	155	

## FOREIGN PATENT DOCUMENTS

		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION	
							YES	NO
	B01	FR 2 753 368	10/2000	France (see AJ)			X	
	B02	FR 2 700 947	08/1994	France			X*	
	B03	FR 2 697 996	09/1995	France			X*	
	B04	DE 44 23 257 A1	11/1996	Germany (see BS)			X	
	B05	DE 195 09 317 A1	09/1996	Germany			X*	
	B06	DE 195 04 867 C1	12/1997	Germany			X	
	B07	DE 44 09 392 A1	09/1995	Germany			X*	
	B08	RU 2008851 C1	3/1994	Russia			X*	
	B09	EP 0 968 692 A1	01/2000	EPO			X	
	B10	EP 0 966 930	12/1999	EPO			X	
	B11	EP 0 832 622 A2	4/1998	Europe			X	
	B12	EP 0 639 351 A2	11/1996	EPO (see BT)			X	
	B13	EP 0 577 178 A1	01/1994	EPO			X	
	B14	WO 00/74607 A1	12/2000	PCT			X	
	B15	WO 00/59412	10/2000	PCT			X	
	B16	WO 00/41654	07/2000	PCT			X	
	B17	WO 00/40177	07/2000	PCT			X	
	B18	WO 00/30568	06/2000	PCT			X	
	B19	WO 00/07528	02/2000	PCT			X	
	B20	WO 00/07527	02/2000	PCT			X	
	B21	WO 99/56675	11/1999	PCT			X	

	B22	WO 99/38461	08/1999	PCT			X	
	B23	WO 99/32055	07/1999	PCT			X	
	B24	WO 98/55052	12/1998	PCT			X	
	B25	WO 98/17209	04/1998	PCT			X	
	B26	WO 98/29047	7/1998	PCT			X	
	B27	WO 97/20526	06/1997	PCT			X	
	B28	WO 96/37170	11/1996	PCT			X*	
	B29	WO 96/39988	12/1996	PCT			X	
	B30	WO 92/01428	02/1992	PCT			X*	

**OTHER REFERENCES** (Including Author, Title, Date, Pertinent Pages, Etc.)

	C01	Fred H. Albee, <i>Bone Graft Surgery in Disease, Injury and Deformity</i> , D. Appleton-Century Company, Inc., New York, 1940, pp. 30, 114, 151, 155, 164, 212, 256-257, 311-313.
	C02	Fred H. Albee, "Bone Surgery With Machine Tools," <i>Scientific American</i> , April, 1936, pp. 178-181.
	C03	Fred H. Albee, <i>Bone-Graft Surgery</i> , W. B. Saunders Company, Philadelphia, Pennsylvania, 1915, pp. 145, 165-166, 171, 368-369.
	C04	SynMesh System Technique Guide, Synthes Spine, December, 2002.

<b>EXAMINER</b>	<b>DATE CONSIDERED</b>
<p><small>*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.</small></p>	